1  Susan K. Breen (No. 156059)
   HEMAR, ROUSSO & HEALD, LLP
2  15910 Ventura Boulevard, 12th Floor
   Encino, California 91436
3  Telephone:  (818) 501-3800
   Facsimile:  (818) 501-2985
4  E-Mail: sbreen@hemar-rousso.com

5  Philip E. Weiss, Esq. (No.152523)
   BRODSKY MICKLOW BULL & WEISS, LLP
6  2608 Shelter Island Drive, Suite 202
   San Diego, California 92106
7  Telephone: (619) 225-8884
   Facsimile: (619) 225-8801
8  E-Mail: Shiplaw@earthlink.net

9  Attorneys for Plaintiff
   FDIC-R, As Receiver for Irwin Union Bank
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12                 **UNITED STATES DISTRICT COURT**

13                **SOUTHERN DISTRICT OF CALIFORNIA**

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|---|---|
| 15 FDIC, AS RECEIVER FOR IRWIN UNION BANK, F.S.B., ) | Case No. 09-CV 1809 LAB POR |
| ) | IN ADMIRALTY |
| 16  Plaintiff, ) | |
| ) | DECLARATION OF PHILIP E. |
| 17 v. ) | WEISS RE AND NOTICE OF INTENTION OF PLAINTIFF TO |
| ) | CREDIT BID AT |
| 18 M/Y MACHIAVELLI, U.S.C.G. Official No. ) | INTERLOCUTORY AUCTION |
| 1167683, AND ALL OF HER ENGINES, ) | |
| 19 TACKLE, ACCESSORIES, EQUIPMENT, ) | F.R.C.P. Supplemental Admiralty |
| FURNISHINGS AND APPURTENANCES, *in* ) | Rules C and E. |
| 20 *rem*; BDL WORLDWIDE, L.L.C., a California ) | |
| limited liability company, *in personam*; ) | |
| 21 DIVERSIFIED HUMAN RESOURCES, INC., an ) | 46 U.S.C. Sections 30101-31343 |
| Arizona corporation, *in personam*, BRIAN D. ) | |
| 22 LESK, an individual, *in personam*. ) | Local Admiralty Rule E.1(e)(2) |
| ) | |
| 23  Defendants. ) | |
| ) | |
| 24 _____ ) | |

25

26        I, Philip E. Weiss, declare as follows:

27        1.        I am an attorney at law licensed to practice in all State and Federal courts

28  located in the State of California, including this Honorable Court.

1    2.    I am counsel of record for Plaintiff herein, FDIC, AS RECEIVER FOR IRWIN

2    UNION BANK, F.S.B.

3    3.    The matters contained herein are within my personal knowledge, and if called

4    to testify as to such matters I could and would competently thereto testify.

5    4.    Plaintiff FDIC, AS RECEIVER FOR IRWIN UNION BANK, F.S.B. lawfully

6    holds a maritime lien that encumbers the DEFENDANT VESSEL, as it is (as successor in

7    interest to Irwin Union Bank, F.S.B.) the holder and beneficiary of a Preferred Ship

8    Mortgage and associated Promissory Note in its favor.

9    5.    On April 18, 2011 the Honorable Larry Alan Burns, United States District

10   Court Judge, entered an Order: (1) Authorizing Interlocutory Vessel Sale; (2) Appointing

11   Replacement Custodian; (3) Appointing Broker to Market Vessel and Permitting Sea Trials;

12   (4) Authorizing Work Aboard Defendant Vessel; (5) Permitting FDIC-R Personnel To Board

13   Defendant Vessel and (6) Authorizing Credit Bid. [Docket No. 50].

14   6.    The Court's April 18, 2011 Order provides at page seven that:

15   "IT IS FURTHER ORDERED that PLAINTIFF, having demonstrated it
     maintains a secured preferred maritime mortgage lien interest in the
16   DEFENDANT VESSEL pursuant to the Commercial Instruments and Federal
     Maritime Lien Act (46 U.S.C. sections 31301 et seq.), and it being the senior
17   maritime lien claimant in this action, is authorized pursuant to Local Admiralty
     Rule E.1(e)(2) to credit bid at the auction of the DEFENDANT VESSEL,
18   without payment of cash, a sum equal to the sum demanded in the Verified
     Complaint, $1,393,214.22, plus interest (calculated through August 5, 2010) in
19   the amount of $56,076.66, plus late charges in the amount of $2,928.67, for a
     total sum (calculated through August 9, 2010) in the amount of $1,452,219.40,
20   with interest accruing pursuant to paragraph 5.3 of the Promissory Note at the
     Default Rate of 11.5% per annum."

21

22   7.    Plaintiff is accordingly authorized pursuant to Order of the United States

23   District Court (Southern District of California) and Local Admiralty Rule E.1(e)(2) to credit

24   bid at the interlocutory vessel auction of the DEFENDANT VESSEL, and notice is hereby

25   accordingly provided that it intends to bid at such auction, in an amount up to the above

26   ///

27   ///

28   ///

1   specified total ($1,452,219.40, as of August 9, 2010), plus further interest that has accrued

2   since August 9, 2010, at the Default Rate of 11.5% per annum.

3          I declare this 27th day of June, 2011 at San Diego, California, under penalty of perjury

4   under the laws of the United States and the State of California, that the foregoing is true and

5   correct.

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7                                          _____s/Philip E. Weiss_____
                                           Attorney for Plaintiff
8                                          E-mail: shiplaw@earthlink.net

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DECLARATION OF PHILIP E. WEISS RE AND NOTICE OF INTENTION                    Page -3-
OF PLAINTIFF TO CREDIT BID AT INTERLOCUTORY AUCTION                    Case No. 09 CV 1809 LAB (POR)